

Central Intelligence Agency



Washington, D.C. 20505

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Mr. James C. Murr
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503


Dear Mr. Murr:

In accordance with the Office of Management and Budget Circular No. A-19, I am submitting a proposed report on S. 444, the "Federal Advisory Committee Act Amendments of 1989," for your advice as to whether there is any objection to its submission from the standpoint of the President's program.

Chairman Glenn has requested receipt of our views by April 7 1989. We believe adherence to his request will ensure favorable legislative action in response to our report. Accordingly, prompt receipt of your advice is most appreciated.

Sincerely,

SIGNED


Acting Director of Congressional Affairs

Enclosure

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LEGISLATIVE REGISTRY

89-1072

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

LEONARD WEISS, STAFF DIRECTOR

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March 7, 1989

The Honorable William H. Webster
Director
Central Intelligence Agency
Washington, D.C. 20505

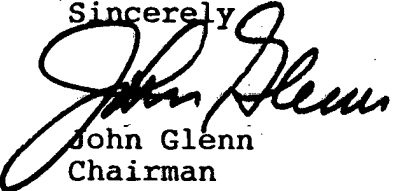
Dear Judge Webster:

Enclosed please find a copy of S. 444, the Advisory Committee Amendments Act of 1989. In order to facilitate action by the Committee on Governmental Affairs on this legislation, I would appreciate the benefit of your written comments. Please direct your reply to Lorraine Lewis of my staff: Committee on Governmental Affairs, 340 Dirksen Senate Office Building, Washington, D.C. 20510 (x224-4751).

In particular, S. 444, as introduced, would continue to provide that the advisory committees established or utilized by the Central Intelligence Agency are exempt from the requirements of FACA. Please address in your comments whether these advisory committees should remain exempted from the requirements of FACA, together with your reasons for proposing such action.

I would appreciate your reply by close of business, April 7, 1989. Thank you for your attention.

Sincerely


John Glenn
Chairman

Enclosure

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Plan; rather they would be consolidated or reassigned in order to ensure the delivery of services, execution of the law, and overall effectiveness of the Commission.

Reorganization Plan No. 12202, dated March 18, 1980, I established a Nuclear Regulatory Commission to advise me of progress being made by the Nuclear Regulatory Commission, the nuclear industry, and others in improving nuclear safety. I intend that the present Reorganization Plan, together with the amendments, have been or are being taken by this Administration and by others, to achieve the goal of nuclear safety. It would permit the Commission and I to hold one individual—the Chairman—accountable for implementing the Commission's policies through effective management of the Commission's management and administrative details, the Commission's attention on the purpose for which that collegial body was created—to the formulation of policy and rules to govern nuclear safety and to the disposition of individual cases.

JIMMY CARTER

the United States:

the following amendments to Reorganization Plan No. 1 of the Congress on March 27, 1980.

Reorganization Plan No. 1 are consistent with my original intent in the management of the Nuclear Regulatory Commission in safety in all of the agency's activities, while preserving the Commission form. The amendments reinforce the purpose of the

First, the amended Plan gives the Commission a greater role in the management of the agency by adding four positions to the list of positions held by the Chairman for the Commission's advice and consent. These positions are: the Executive Director for Operations, the Director of Inspection and Enforcement, the Director of Nuclear Regulatory Research, and the Director of Safety. Each of these positions contributes to nuclear safety and performs functions that help determine the policy and performance of the Commission.

The Commission on Reactor Safeguards advises the Commission as a member of the Commission's 4-year terms, another amendment to the Commission member, as well as the Chairman, can initiate an advisory committee on Reactor Safeguards for approval by the

ensure that the flow of information to the Commission will not be impeded. As has been amended to make explicit that the Chairman, and the Executive Director for Operations through the Chairman, shall keep the Commission informed.

The purpose of the amendments is to provide for more effective management of the agency by making more explicit the responsibilities of the Executive Director for Operations acting under his direction. As the amendments charge the Chairman with planning for the development of the agency and approval by the Commission. In the past, this responsibility has been fixed and has consequently been neglected. The amended Plan makes clear that the Executive Director for Operations reports to the Chairman. The amendment, however, requires the Chairman to delegate to the Executive Director for Operations the authority to appoint the staff and the management of the agency. Under this arrangement, the Chairman will be responsible for the delegated functions but will be better able to handle his responsibilities.

The amendments I am transmitting to Reorganization Plan No. 1 of the Congress and on continued to establish a more accountable central management structure for the Nuclear Regulatory Commission as it pursues its statutory objective of the use of nuclear power.

JIMMY CARTER

APPENDIX 2

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, 42 F.R. 56101, 91 Stat. 1634; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040; Pub.L. 97-375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.

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| <p>Sec.</p> <ol style="list-style-type: none"> 1. Short title. 2. Findings and purpose. 3. Definitions. 4. Applicability; restrictions. 5. Responsibilities of Congressional committees; review; guidelines. 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion. 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat; establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations. | <p>Sec.</p> <ol style="list-style-type: none"> 8. Responsibilities of agency heads; Advisory Committee Management Officer; designation. 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy. 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance. 11. Availability of transcripts; "agency proceeding". 12. Fiscal and administrative provisions; record-keeping; audit; agency support services. 13. Responsibilities of Library of Congress; reports and background papers; depository. 14. Termination of advisory committees; renewal; continuation. 15. Effective date. |
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Law Review Commentaries

Advisers and secrets: The role of agency confidentiality in the Federal Advisory Committee Act. James T. O'Reilly, 13 N.Ky.L.Rev. 27 (1986).

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

Cross References

Pacific Salmon Commission, this Act not applicable to consultations by Commissioners and Panel members, see section 3632(h) of Title 16, Conservation.

for the Humanities be made available to the public by subgroup, but does not require that such disclosure occur until after the particular subgroup's work has been completed. 1980 (Counsel-Inf. Op.) 4B Op.O.L.C. 743.

Notes of Decisions

1. Disclosure of membership

This Act requires that the names of members of the Humanities Panel of the National Endowment

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

§ 3

Note 2

chase from the Blind & Other Severely Handicapped, D.C.Va.1985, 615 F.Supp. 970.

Task forces cochaired by members of Executive Committee of Private Sector Survey established by the President to give advice on cost-effective management of federal programs were not subject to this Appendix, as they merely provided information and recommendations for consideration to the Committee, notwithstanding that they were intimately involved in gathering of information about federal programs and formulation of possible recommendations for consideration of the Committee. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C.1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Although Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards is an "advisory committee" subject to provisions of this appendix the Commission's Atomic Safety and Licensing Board is not an "advisory committee." Hunt v. Nuclear Regulatory Commission, D.C. Okl.1979, 468 F.Supp. 817, affirmed 611 F.2d 332, certiorari denied 100 S.Ct. 1084, 445 U.S. 906, 63 L.Ed.2d 322.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. Center for Auto Safety v. Tiemann, D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix. Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. Id.

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation. Lombardo v. Handler, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 531 L.Ed.2d 248.

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any

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Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. Nader v. Baroody, D.C.D.C.1975, 396 F.Supp. 1231.

3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by virtue of Senator's position as such, had standing to complain that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 761 et seq. of Title 15. Metcalf v. National Petroleum Council, 1977, 553 F.2d 176, 180 U.S.App.D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix. Nader v. Baroody, D.C.D.C.1975, 396 F.Supp. 1231.

4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. Lombardo v. Handler, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

The Congress did not intend the Federal Advisory Committee Act to apply to a body created jointly by the United States and another nation, such as the U.S.-Japan Consultative Group on Economic relations. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 321.

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Act of Congress establishing any such advisory committee otherwise.

(b) Nothing in this Act shall be construed to apply to established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any primary function is that of rendering a public service with program, or any State or local committee, council, board group established to advise or make recommendations to agencies.

§ 5. Responsibilities of Congressional committees; review

(a) In the exercise of its legislative review function, each the Senate and the House of Representatives shall make a activities of each advisory committee under its jurisdiction such advisory committee should be abolished or merged committee, whether the responsibilities of such advisory vised, and whether such advisory committee performs already being performed. Each such standing committee action to obtain the enactment of legislation necessary to this subsection.

(b) In considering legislation establishing, or authorizing advisory committee, each standing committee of the Senate Representatives shall determine, and report such determination the House of Representatives, as the case may be, whether proposed advisory committee are being or could be per agencies or by an advisory committee already in existence mandate of an existing advisory committee. Any such le

(1) contain a clearly defined purpose for the advisory

(2) require the membership of the advisory committee terms of the points of view represented and the function the advisory committee;

(3) contain appropriate provisions to assure that the tions of the advisory committee will not be inappropriate appointing authority or by any special interest, but v the advisory committee's independent judgment;

(4) contain provisions dealing with authorization for submission of reports (if any), the duration of the publication of reports and other materials, to the committee determines the provisions of section 10 of and

(5) contain provisions which will assure that the adequate staff (either supplied by an agency or employing adequate quarters, and will have funds available to expenses.

(c) To the extent they are applicable, the guidelines in this section shall be followed by the President, agencies officials in creating an advisory committee.

Code of Federal Regulations
Committee management regulations—
Consumer Products Safety Commission, see 16 CFR 1018.1.
Department of Agriculture, see 7 CFR 25.1.
Department of Education, see 34 CFR 11.1.
Department of Health and Human Services, see 45 CFR 11.1.
Federal Emergency Management Agency, see 44 CFR 12.1.
Marine Mammal Commission, see 50 CFR 510.1.

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The Congress did not intend the Federal Advisory Committee Act to apply to a body created jointly by the United States and another nation, such as the U.S.-Japan Consultative Group on Economic relations. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 321.

Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

Code of Federal Regulations

Committee management regulations—

Consumer Products Safety Commission, see 16 CFR 1018.1.

Department of Agriculture, see 7 CFR 25.1.

Department of Education, see 34 CFR 11.1.

Department of Health and Human Services, see 45 CFR 11.1.

Federal Emergency Management Agency, see 44 CFR 12.1.

Marine Mammal Commission, see 50 CFR 510.1.

Nuclear Regulatory Commission, see 10 CFR 7.1.

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